In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1287

IRVING RICH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on February 21, 1969. A petition for rehearing was denied on March 21, 1969. On Monday, April 21, 1969 the petition for a writ of certiorari was filed. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the affidavits used as a basis for the issuance of a search warrant set forth with sufficient particularity probable cause for the search.

STATEMENT

After waiving trial by jury, petitioner was convicted by the United States District Court for the Southern District of Florida on a three-count indictment which charged that he used a common carrier for the interstate transportation of obscene films and playing cards, that he received such items after such transportation, and that he caused them to be transported in interstate commerce for purposes of sale (18 U.S.C. 1462, 1465). He was sentenced to concurrent terms of six months' imprisonment on each of the first two counts; on the last count sentence was suspended and it was ordered that petitioner be placed on probation for four years.

The sole issue raised is the sufficiency of affidavits with which F.B.I. agents procured a warrant for the search of three closed cartons at the Greyhound Bus Terminal in Miami.[1] The affidavits (Pet. App. F) recited that the affiants had reason to believe that three cartons in the bus terminal addressed to "Mr. Rich, 530 N.W. 26th St. Miami, Fla." contained obscene materials. One agent recited that an informant

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[1] After the warrant was issued and the packages were found to contain obscene movies and cards, the packages were left at the terminal. Petitioner was arrested when he later presented the shipper's copies of the labels and obtained the packages (R. 39-40, 93, 98-99).

who had previously proved reliable, reported that he had purchased obscene material from "one Irvin Rich, whose home address is 7901 S.W. 14th Terrace"; that the agent had seen the material and that it depicted acts of sexual intercourse and sodomy; that Irvin Rich had told the informant that he received shipments of such items from sources in New York by Greyhound bus; and that, in early September, 1967, Irvin Rich had said he was going to New York to check on a missing shipment (Pet. App. F 3-4). Another agent recited that on September 10, he saw Irvin Rich board a flight to Newark, New Jersey; that on September 13, he saw Rich arrive in Miami on a non-stop flight from Newark; and that on September 14, he saw three cardboard cartons which arrived at the Greyhound bus terminal addressed to "Mr. Rich, 530 N.W. 26th St., Miami, Fla." The return address on two of the cartons was "Rich, 86 Walnut St., Newark, New Jersey" and on the third was "Elpo, 1199 Broadway, New York, New York" (Pet. App. F 1-2).

ARGUMENT

In this Court, petitioner argues that the affidavits for the search warrants were insufficient because they did not show that the packages addressed to Rich at 26th Street in Miami, were intended for the Irvin Rich of 7901 S.W. 14th Terrace whom the agents had observed and about whom they had information. As its opinion shows, the Court below was fully aware of this Court's recent decision in *Spinelli* v. *United States*, 393 U.S. 410 and correctly applied the principles there set out (Pet. App. A). The combination

of circumstances—that petitioner said he received material from New York by bus, and was going to New York to check on a shipment, that he did in fact go to and come from Newark; and that the day after his return to Miami, packages addressed to someone named Rich with return addresses in Newark and New York—constituted probable cause to believe that petitioner was the person for whom the packages were intended. Probable cause, not absolute certainty, is the standard governing the issuance of warrants. If the affidavit is read in a common sense manner (See *United States* v. *Ventresca*, 380 U.S. 102, 108), it is clear that the finding of probable cause was amply justified.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

WILL WILSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
EDWARD FENIG,
Attorneys.

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